

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 814 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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ISMAILBHAI H AFRICAWALA

Versus

RATILAL POPATLAL

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Appearance:

NOTICE SERVED for Petitioner

MR KG SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 2, 5

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/03/2000

ORAL JUDGEMENT

#. This Revision Application has been filed by the original plaintiff of Reg.Civil Suit No. 268 of 1977. The said suit was filed for getting possession of the

suit premises from the defendants as well as for getting for arrears of rent.

#. It is the case of the plaintiff that he is the owner of the suit property and the suit property was rented out to the defendants nos 1 and 2 on 1.7.70 at the rate of Rs.100/- p.m. The defendants were using the suit property for running the business of selling ready made clothes . It is further the case of the plaintiff that the defendants had agreed not to sub let the suit premises or transfer or assign their interest to any one. Defendants nos 1 and 2 were running business in the name and style of "Jagdish Cloth Stores" but subsequently there was a new sign board in the name and style of 'Kailash Cloth Stores.' At the time of starting the said Kailash Cloth Stores invitation cards were also issued under the signatures of defendants nos 1,3,4 and 5. The plaintiff gave a notice to the defendants on 26.9.1977 alleging that the suit premises was rented to the defendants nos 1 and 2 and that they have parted with the possession thereof. In reply to the notice defendant no.1 has mentioned that he has inducted other partners in the business. The plaintiff thereafter, filed the aforesaid suit for possession on the ground of subletting and the plaintiff had also prayed for Rs.1746/- as the amount of arrears of rent.

#. Defendants nos 1 to 5 appeared in the suit and filed their written statement at exh.19. They denied the case of sub letting on the ground that there is a genuine partnership between the defendants and accordingly, the suit of the plaintiff was resisted by the defendants denying the allegations about subletting.

#. The learned Trial Judge framed various issues at exh.20. After recording the evidence and after hearing the arguments of both the sides the Trial Court came to the conclusion that the plaintiff has failed to prove that the defendants nos 1 and 2 have unlawfully sub let the suit premises to the defendants nos 3 to 5 and therefore, decree for possession was refused and the Trial Court partly allowed the suit by granting decree for arrears of rent.

#. The decree of the Trial Court was challenged by the original plaintiff by filing Regular Civil Appeal No. 66 of 1982. Aforesaid appeal was dismissed by the learned District Judge, Amreli by his judgment and order dated 24.10.85.

#. Aforesaid judgment and decree of the Appellate Court is impugned in this Revision Application.

#. As per the endorsement, notice was served on the petitioner. He has not appeared nor has he engaged any advocate. Therefore, the matter is now required to be decided in the absence of the petitioner.

8. I have gone through the judgment of both the courts below and have also gone through the records of the case. It is the specific case of the plaintiff that the defendants nos 1 and 2 has sublet the suit premises to defendants nos 3 to 5. The plaintiff has stated in his evidence that the defendant no. 3 had approached him before starting the business in the name of Kailash Cloth Stores and that he had requested him to transfer the rent note in his name but the plaintiff had refused to do so. Aforesaid say of the plaintiff was denied by the defendant no.3. Defendant no.1 has also refused the aforesaid allegation of the plaintiff. It has been found from the evidence of the plaintiff that he had received invitation card at the time when Kailash Cloth Stores was started. It has been found by the courts below that the defendants nos 1 and 2 continued to be the partners in the said business having taken active role in the partnership business in the name and style of Kailash Cloth Stores. The partnership deed in question which is between defendants nos 1,3 and 4 dated 8.8.77 is produced at exh.71. As per the same the defendant no. 2 is having 10 percent share in the business and rest of the two defendants have 45 percent share in the business. It has been found that the defendant no.1 was taking active part in the management of business and he has not left possession of the suit premises nor has abandoned the premises in favour of the defendants nos 3 and 4. The Appellate Court has considered the evidence of defendant no.1 at exh.77 in this behalf. The Appellate Court has found in para 10 of the judgment that the firm Kailash Cloth Stores is paying income tax. The Appellate Court has also found that even if the rent is paid by Kailash Cloth Stores then also there is no unlawful subletting. It was found that said partnership agreement is genuine and is not a camouflage to circumvent the provisions of law. The finding arrived at by the courts below is essentially a finding of fact which is based on evidence on record. In the circumstances, I do not find any substance in this Revision Application and therefore, the same is required to be dismissed and is accordingly dismissed. Rule is discharged. No order as to costs.

(P.B.Majmudar.J)

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